

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JASON ASSAD,

Petitioner,

v.

TODD WASMER, Warden of Tecumseh
Correctional Institution, and SCOTT R.
FRAKES, Director of the Nebraska
Department of Correctional Services,

Respondents.

4:20CV3070

**ORDER UPON
INITIAL REVIEW**

Jason Assad (“Assad”) is a prisoner at the Tecumseh Correctional Institution within the Nebraska Department of Correctional Services. Sentenced as an “habitual criminal” under Nebraska law, Assad reports he is serving 35 to 60 years for possession of a knife by a prohibited person, first degree false imprisonment, terroristic threats, use of a knife to commit a felony, and possession of a firearm by a prohibited person.

Before the Court is Assad’s Petition for a Writ of Habeas Corpus (“petition”) under 28 U.S.C. § 2254 (Filing No. 1). Section 2254 requires the Court to “entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” Under Rule 4 of the Rules Governing § 2254 Cases, the Court must conduct an initial review of the petition and summarily dismiss it “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief.” If the Court does not summarily dismiss the petition, it “must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the [Court] may order.”

In his petition, Assad states “[t]his is an unusual case in which [he] seeks a conditional writ of habeas corpus in which he can only be released if the State of Nebraska refused to permit a direct appeal.” According to Assad, the Eighth Circuit granted “the same relief” he seeks “in *Hendricks v. Locke*, 238 F.3d 985 (8th Cir. 2001) under essentially identical facts.”

Averring he has exhausted his claims under state law, Assad asserts just one ground for relief:

PETITIONER HAS BEEN DENIED HIS CONSTITUTIONAL RIGHT TO ONE DIRECT APPEAL OF HIS CONVICTION UNDER Neb. Rev. Stat. § 25-1912 IN WHICH “PREJUDICE” SHOULD BE PRESUMED BECAUSE THE ERRORS BY APPELLATE COUNSEL TOTALLY PREVENTED PETITIONER FROM OBTAINING ANY REVIEW OF HIS CONVICTION ON ANY MERITS IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS AND THE DECISION IN *Douglas v. California*, 372 U.S. 353 (1963) AND *Evitts v Lucey*, 469 U.S. 387, 105 S.Ct. 830 (1985) AND THEIR PROGENY.

The Court has completed an initial review of Assad’s petition and supporting documentation and finds that summary dismissal under Rule 4 is not required in this case. Based on that finding,

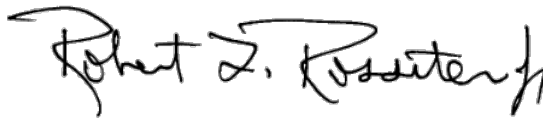
IT IS ORDERED:

1. The Clerk of Court shall serve copies of this order and the petition to the respondents and the Nebraska Attorney General.
2. On or before August 7, 2020, the respondents shall file a response consisting of either an answer to the petition on the merits of the claims and any affirmative defenses in the manner contemplated by Rule 5 of the Rules Governing § 2254 Cases, or a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. The Clerk of Court shall set a case-management deadline for this date.
3. Whether filing an answer or a motion for summary judgment, the respondents shall file (1) a pleading entitled “Designation of Relevant State Court Records,” describing in detail any records relevant to the petition, and (2) copies of all records described in that designation.

4. If Assad determines the respondents' designation is insufficient, he shall have ten days to file a motion specifically requesting additional documents and explaining the reasons the documents are relevant to his claims.
5. Whether the respondents file an answer or a motion for summary judgment, Assad shall file any reply within thirty days after service of the respondents' answer or motion.

Dated this 6th day of July 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge